

**AMENDMENT TO THE COMMITTEE PRINT
OFFERED BY MR. GILLMOR**

[Privacy]

Strike out title V of the Committee Print and insert
the following:

1 **TITLE V—PRIVACY OF**
2 **CONSUMER INFORMATION**
3 **Subtitle A—Disclosure of**
4 **Nonpublic Personal Information**

5 **SEC. 501. OBLIGATIONS WITH RESPECT TO PERSONAL IN-**
6 **FORMATION.**

7 (a) GENERAL REQUIREMENTS.—Except as otherwise
8 provided in this subtitle, a financial institution may not,
9 directly or through any affiliate, divulge or make an unre-
10 lated use of any nonpublic personal information collected
11 by the financial institution in connection with any trans-
12 action with a consumer in any financial product or any
13 financial service, unless—

14 (1) such financial institution provides or has
15 provided to the consumer a notice that complies with
16 section 502 and the rules thereunder; and

1 (2) such financial institution maintains proce-
2 dures to protect the confidentiality and security of
3 nonpublic personal information.

4 (b) OPT-OUT REQUIRED FOR SALES TO THIRD PAR-
5 TIES.—The Commission shall by rule prohibit a financial
6 institution from making available, for any consideration,
7 nonpublic personal information collected by the financial
8 institution in connection with any transaction with a con-
9 sumer in any financial product or any financial service to
10 any person that is not—

11 (1) an affiliate of the financial institution;

12 (2) an employee or agent of such institution or
13 affiliate; or

14 (3) an unrelated third party that is engaged in
15 the provision of a product or service that bears a
16 reasonable relationship to the consumer's trans-
17 actions with the financial institution;

18 unless the consumer to whom the information pertains (A)
19 is given the opportunity in accordance with such rule to
20 object to the sale of such information; and (B) does not
21 object, or withdraws the objection.

22 (c) ACCESS TO AND CORRECTION OF INFORMATION
23 VENDED TO THIRD PARTIES.—

24 (1) RULE REQUIRED.—The Commission shall
25 by rule require a financial institution that, for any

1 consideration, makes available nonpublic personal in-
2 formation collected by the financial institution in
3 connection with any transaction with a consumer in
4 any financial product or any financial service to any
5 person or entity other than an employee or agent of
6 such institution, an affiliate of such institution, or
7 an employee or agent of such affiliate, to afford that
8 consumer—

9 (A) the opportunity to examine, upon re-
10 quest, the nonpublic personal information that
11 was so made available; and

12 (B) the opportunity to dispute the accu-
13 racy of any of such information, and to present
14 evidence thereon.

15 (2) EXCEPTION FOR PROPRIETARY INFORMA-
16 TION.—The rule required by paragraph (1) shall not
17 require a financial institution to afford a customer
18 who requests access to the nonpublic personal infor-
19 mation that was made available the opportunity to
20 examine or dispute any data obtained by any anal-
21 ysis or evaluation performed using such information,
22 or to examine or dispute the methodology of such
23 analysis or evaluation.

24 (d) GENERAL EXCEPTIONS.—Subsections (a) and (b)
25 shall not prohibit the divulging of nonpublic personal in-

1 formation, the making of an unrelated use of such infor-
2 mation, or the making available of such information for
3 consideration to third parties by the financial institution—

4 (1) as necessary to effect or enforce the trans-
5 action or a related transaction;

6 (2) as necessary to protect the confidentiality or
7 security of its records pertaining to the consumer,
8 the financial service or financial product, or the
9 transaction therein;

10 (3) as necessary to take precautions against li-
11 ability;

12 (4) as necessary to respond to judicial process;

13 (5) to the extent permitted or required under
14 other provisions of law and in accordance with the
15 Right to Financial Privacy Act of 1974, to provide
16 information to law enforcement agencies (including a
17 functional regulator or the Commission) or for an
18 investigation on a matter related to public safety;

19 (6) to a consumer reporting agency in accord-
20 ance with title VI of the Consumer Credit Protection
21 Act; or

22 (7) in executing a sale or exchange whereby the
23 financial institution transfers to another financial in-
24 stitution or other person the business unit or oper-
25 ation, or substantially all the assets of the business

1 unit or operation, with which the customer's trans-
2 actions were effected.

3 **SEC. 502. NOTICE CONCERNING DIVULGING INFORMATION.**

4 (a) RULE REQUIRED.—The Commission shall, after
5 consultation with the Federal functional regulators and
6 one or more representatives of State insurance regulators,
7 prescribe rules in accordance with this section to prohibit
8 unfair and deceptive acts and practices in connection with
9 the divulging of nonpublic personal information or with
10 making unrelated uses of such information. Such rules
11 shall require any financial institution, through the use of
12 a form that complies with the rules prescribed under sub-
13 section (b), to clearly and conspicuously disclose to the
14 consumer—

15 (1) the categories of nonpublic personal infor-
16 mation that are collected by the financial institution;

17 (2) the practices and policies of the financial in-
18 stitution with respect to divulging nonpublic per-
19 sonal information, or making unrelated uses of such
20 information, including—

21 (A) the categories of persons to whom the
22 information is or may be divulged or who may
23 be permitted to make unrelated uses of such in-
24 formation, other than the persons to whom the

1 information must be provided to effect or en-
2 force the transaction; and

3 (B) the practices and policies of the insti-
4 tution with respect to divulging or making un-
5 related uses of nonpublic personal information
6 of persons who have ceased to be customers of
7 the financial institution; and

8 (3) the policies that the institution maintains to
9 protect the confidentiality and security of nonpublic
10 personal information.

11 (b) DESIGN OF NOTICE REQUIREMENTS.—In pre-
12 scribing the form of a notice for purposes of subsection
13 (a), the Commission shall ensure that consumers are read-
14 ily able to compare differences in the measures that the
15 financial institution takes, and the policies that the insti-
16 tution has established, to protect the consumer's privacy
17 as compared to the measures taken and the policies estab-
18 lished by other financial institutions. Such form shall spe-
19 cifically identify any rights the institution affords con-
20 sumers to grant or deny consent to (1) the divulging of
21 nonpublic personal information for any purpose other than
22 as required in order to effect or enforce the consumer's
23 transaction, or (2) the making of an unrelated use of such
24 information.

1 (c) ADDITIONAL CONTENTS OF RULES; EXEMPTIVE
2 RULES.—The Commission shall, by rule after consultation
3 with the functional regulators, and may by order—

4 (1) specify the divulgences and uses of informa-
5 tion which, for purposes of this subtitle and the
6 rules prescribed thereunder, may be treated as nec-
7 essary to effect or enforce a consumer's transaction
8 with respect to a variety of financial services and fi-
9 nancial products;

10 (2) specify timing requirements with respect to
11 notices to new and existing customers, which shall
12 not require notices more frequently than annually
13 unless there has been a change in the information
14 required to be disclosed pursuant to subsection (a);
15 and

16 (3) provide, consistent with the purposes of this
17 subtitle, exemptions or temporary waivers to, or de-
18 layed effective dates for, any requirement of this
19 subtitle or the rules prescribed thereunder.

20 (d) EXEMPTIVE RULES TO PERMIT EFFICIENT DATA
21 STORAGE AND RETRIEVAL.—The exemptive rules pre-
22 scribed by the Commission pursuant to subsection (c)(3)
23 shall include such rules as may be necessary to permit fi-
24 nancial institutions and their affiliates to establish and
25 maintain efficient systems to collect and access nonpublic

1 personal information in shared or networked data storage
2 and retrieval facilities that are implemented in a manner
3 consistent with the requirements of section 501.

4 (e) RULEMAKING DEADLINE.—The Commission shall
5 initially prescribe the rules required by this section within
6 one year after the date of enactment of this Act. Such
7 rules, and any revisions of such rules, shall be prescribed
8 in accordance with section 553 of title 5, United States
9 Code.

10 **SEC. 503. ENFORCEMENT.**

11 (a) IN GENERAL.—This subtitle and the rules pre-
12 scribed thereunder shall be enforced by the Federal Trade
13 Commission under the Federal Trade Commission Act (15
14 U.S.C. 41 et seq.).

15 (b) ACTIONS BY THE COMMISSION.—The Federal
16 Trade Commission shall prevent any person from violating
17 this subtitle and the rules prescribed thereunder in the
18 same manner, by the same means, and with the same ju-
19 risdiction, powers, and duties as though all applicable
20 terms and provisions of the Federal Trade Commission
21 Act (15 U.S.C. 41 et seq.) were incorporated into and
22 made a part of this subtitle. Any person who violates this
23 subtitle or the rules prescribed thereunder shall be subject
24 to the penalties and entitled to the privileges and immuni-
25 ties provided in the Federal Trade Commission Act in the

1 same manner, by the same means, and with the same ju-
2 risdiction, power, and duties as though all applicable terms
3 and provisions of the Federal Trade Commission Act were
4 incorporated into and made a part of this subtitle.

5 (c) TREATMENT OF RULES.—A rule issued by the
6 Commission under this title shall be treated as a rule
7 issued under section 18(a)(1)(B) of the Federal Trade
8 Commission Act (15 U.S.C. 57a(a)(1)(B)).

9 **SEC. 504. DEFINITIONS.**

10 As used in this subtitle:

11 (1) COMMISSION.—The term “Commission”
12 means the Federal Trade Commission.

13 (2) FEDERAL FUNCTIONAL REGULATOR.—The
14 term “Federal functional regulator” means—

15 (A) the Board of Governors of the Federal
16 Reserve System;

17 (B) the Office of the Comptroller of the
18 Currency;

19 (C) the Board of Directors of the Federal
20 Deposit Insurance Corporation;

21 (D) the Director of the Office of Thrift
22 Supervision;

23 (E) the National Credit Union Administra-
24 tion Board;

25 (F) the Farm Credit Administration; and

1 (G) the Securities and Exchange Commis-
2 sion.

3 (3) FINANCIAL INSTITUTION.—The term “fi-
4 nancial institution” means any institution the busi-
5 ness of which is engaging in financial activities or
6 activities that are incidental to financial activities, as
7 determined under section 6(c) of the Bank Holding
8 Company Act of 1956 or section 17(i)(7) of the Se-
9 curities Exchange Act of 1934. Such term, when
10 used in connection with a transaction for a con-
11 sumer, means only the financial institution with
12 which the consumer expects to conduct such trans-
13 action and does not include any affiliate, subsidiary,
14 or contractually-related party of that financial insti-
15 tution, even if such affiliate, subsidiary, or party is
16 also a financial institution and participates in the ef-
17 fecting or enforcement of such transaction.

18 (4) NONPUBLIC PERSONAL INFORMATION.—
19 The term “nonpublic personal information” means
20 personally identifiable information, other than pub-
21 licly available directory information, pertaining to an
22 individual’s transactions with a financial institution.

23 (5) DIRECTORY INFORMATION.—The term ‘pub-
24 licly available directory information’ means sub-
25 scriber list information required to be made available

1 for publication pursuant to section 222(e) of the
2 Communications Act of 1934 (47 U.S.C. 222(3)).

3 (6) UNRELATED USE.—The term “unrelated
4 use”, when used with respect to information col-
5 lected by the financial institution in connection with
6 any transaction with a consumer in any financial
7 product or any financial service, means any use
8 other than a use that is necessary to effect or en-
9 force such transaction.

10 (7) DIVULGE; DIVULGENCE.—The terms “di-
11 vulge” and “divulgence”, when used with respect
12 nonpublic personal information collected by the fi-
13 nancial institution in connection with any trans-
14 action with a consumer in any financial product or
15 any financial service, means to make such informa-
16 tion available to any person or entity other than an
17 employee or agent of such institution, an affiliate of
18 such institution, or an employee or agent of such af-
19 filiate.

20 (8) AFFILIATE.—The term “affiliate” means
21 any company that controls, is controlled by, or is
22 under common control with another company.

23 (9) NECESSARY TO EFFECT OR ENFORCE.—The
24 divulging or use of nonpublic personal information
25 shall be treated—

1 (A) as necessary to effect a transaction
2 with a consumer if the divulging or use is re-
3 quired, or is one of the usual and accepted
4 methods, to carry out the transaction and
5 record and maintain the customer's account in
6 the ordinary course of providing the financial
7 service or financial product, and includes—

8 (i) providing the consumer with a con-
9 firmation, statement, or other record of the
10 transaction, or information on the status
11 or value of the financial service or financial
12 product; and

13 (ii) the accrual or recognition of in-
14 centives or bonuses association with the
15 transaction that are provided by the finan-
16 cial institution or any other party;

17 (B) as necessary to enforce a transaction
18 with a consumer if the divulging or use is re-
19 quired, or is one of the lawful methods, to en-
20 force the rights of the financial institution or of
21 other persons engaged in carrying out the fi-
22 nancial transaction, or providing the financial
23 product or financial service.

24 The Commission shall, consistent with the purposes
25 of this subtitle, prescribe by rule actions that shall,

1 in a variety of financial services, and with respect to
2 a variety of financial products, be treated as nec-
3 essary to effect or enforce a financial transaction.

4 (10) FINANCIAL SERVICES; FINANCIAL PROD-
5 UCTS; TRANSACTION; RELATED TRANSACTION.—The
6 Commission shall, consistent with the purposes of
7 this subtitle, prescribe by rule definitions of the
8 terms “financial services”, “financial products”,
9 “transaction”, “related transaction”, and “unrelated
10 third party” for purposes of this subtitle.

11 **SEC. 505. EFFECTIVE DATE.**

12 This subtitle shall take effect one year after the date
13 on which the Commission prescribes in final form the rules
14 required by section 502(a), except to the extent that a
15 later date is specified in such rules.

16 **Subtitle B—Fraudulent Access to**
17 **Financial Information**

18 **SEC. 521. PRIVACY PROTECTION FOR CUSTOMER INFORMA-**
19 **TION OF FINANCIAL INSTITUTIONS.**

20 (a) PROHIBITION ON OBTAINING CUSTOMER INFOR-
21 MATION BY FALSE PRETENSES.—It shall be a violation
22 of this subtitle for any person to obtain or attempt to ob-
23 tain, or cause to be disclosed or attempt to cause to be
24 disclosed to any person, customer information of a finan-
25 cial institution relating to another person—

1 (1) by making a false, fictitious, or fraudulent
2 statement or representation to an officer, employee,
3 or agent of a financial institution;

4 (2) by making a false, fictitious, or fraudulent
5 statement or representation to a customer of a fi-
6 nancial institution; or

7 (3) by providing any document to an officer,
8 employee, or agent of a financial institution, know-
9 ing that the document is forged, counterfeit, lost, or
10 stolen, was fraudulently obtained, or contains a
11 false, fictitious, or fraudulent statement or represen-
12 tation.

13 (b) PROHIBITION ON SOLICITATION OF A PERSON TO
14 OBTAIN CUSTOMER INFORMATION FROM FINANCIAL IN-
15 STITUTION UNDER FALSE PRETENSES.—It shall be a vio-
16 lation of this subtitle to request a person to obtain cus-
17 tomer information of a financial institution, knowing that
18 the person will obtain, or attempt to obtain, the informa-
19 tion from the institution in any manner described in sub-
20 section (a).

21 (c) NONAPPLICABILITY TO LAW ENFORCEMENT
22 AGENCIES.—No provision of this section shall be con-
23 strued so as to prevent any action by a law enforcement
24 agency, or any officer, employee, or agent of such agency,
25 to obtain customer information of a financial institution

1 in connection with the performance of the official duties
2 of the agency.

3 (d) NONAPPLICABILITY TO FINANCIAL INSTITUTIONS
4 IN CERTAIN CASES.—No provision of this section shall be
5 construed so as to prevent any financial institution, or any
6 officer, employee, or agent of a financial institution, from
7 obtaining customer information of such financial institu-
8 tion in the course of—

9 (1) testing the security procedures or systems
10 of such institution for maintaining the confiden-
11 tiality of customer information;

12 (2) investigating allegations of misconduct or
13 negligence on the part of any officer, employee, or
14 agent of the financial institution; or

15 (3) recovering customer information of the fi-
16 nancial institution which was obtained or received by
17 another person in any manner described in sub-
18 section (a) or (b).

19 (e) NONAPPLICABILITY TO INSURANCE INSTITU-
20 TIONS FOR INVESTIGATION OF INSURANCE FRAUD.—No
21 provision of this section shall be construed so as to prevent
22 any insurance institution, or any officer, employee, or
23 agency of an insurance institution, from obtaining infor-
24 mation as part of an insurance investigation into criminal
25 activity, fraud, material misrepresentation, or material

1 nondisclosure that is authorized for such institution under
2 State law, regulation, interpretation, or order.

3 (f) NONAPPLICABILITY TO CERTAIN TYPES OF CUS-
4 TOMER INFORMATION OF FINANCIAL INSTITUTIONS.—No
5 provision of this section shall be construed so as to prevent
6 any person from obtaining customer information of a fi-
7 nancial institution that otherwise is available as a public
8 record filed pursuant to the securities laws (as defined in
9 section 3(a)(47) of the Securities Exchange Act of 1934).

10 **SEC. 522. ADMINISTRATIVE ENFORCEMENT.**

11 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
12 SION.—Compliance with this subtitle shall be enforced by
13 the Federal Trade Commission in the same manner and
14 with the same power and authority as the Commission has
15 under the title VIII, the Fair Debt Collection Practices
16 Act, to enforce compliance with such title.

17 (b) NOTICE OF ACTIONS.—The Federal Trade Com-
18 mission shall—

19 (1) notify the Securities and Exchange Commis-
20 sion whenever the Federal Trade Commission initi-
21 ates an investigation with respect to a financial in-
22 stitution subject to regulation by the Securities and
23 Exchange Commission;

24 (2) notify the Federal banking agency (as de-
25 fined in section 3(z) of the Federal Deposit Insur-

1 ance Act) whenever the Commission initiates an in-
2 vestigation with respect to a financial institution
3 subject to regulation by such Federal banking agen-
4 cy; and

5 (3) notify the appropriate State insurance regu-
6 lator whenever the Commission initiates an inves-
7 tigation with respect to a financial institution sub-
8 ject to regulation by such regulator.

9 **SEC. 523. CRIMINAL PENALTY.**

10 (a) IN GENERAL.—Whoever knowingly and inten-
11 tionally violates, or knowingly and intentionally attempts
12 to violate, section 521 shall be fined in accordance with
13 title 18, United States Code, or imprisoned for not more
14 than 5 years, or both.

15 (b) ENHANCED PENALTY FOR AGGRAVATED
16 CASES.—Whoever violates, or attempts to violate, section
17 521 while violating another law of the United States or
18 as part of a pattern of any illegal activity involving more
19 than \$100,000 in a 12-month period shall be fined twice
20 the amount provided in subsection (b)(3) or (c)(3) (as the
21 case may be) of section 3571 of title 18, United States
22 Code, imprisoned for not more than 10 years, or both.

23 **SEC. 524. RELATION TO STATE LAWS.**

24 (a) IN GENERAL.—This subtitle shall not be con-
25 strued as superseding, altering, or affecting the statutes,

1 regulations, orders, or interpretations in effect in any
2 State, except to the extent that such statutes, regulations,
3 orders, or interpretations are inconsistent with the provi-
4 sions of this subtitle, and then only to the extent of the
5 inconsistency.

6 (b) GREATER PROTECTION UNDER STATE LAW.—
7 For purposes of this section, a State statute, regulation,
8 order, or interpretation is not inconsistent with the provi-
9 sions of this subtitle if the protection such statute, regula-
10 tion, order, or interpretation affords any person is greater
11 than the protection provided under this subtitle as deter-
12 mined by the Commission, on its own motion or upon the
13 petition of any interested party.

14 **SEC. 525. AGENCY GUIDANCE.**

15 In furtherance of the objectives of this subtitle, each
16 Federal banking agency (as defined in section 3(z) of the
17 Federal Deposit Insurance Act) and the Securities and
18 Exchange Commission or self-regulatory organizations, as
19 appropriate, shall review regulations and guidelines appli-
20 cable to financial institutions under their respective juris-
21 dictions and shall prescribe such revisions to such regula-
22 tions and guidelines as may be necessary to ensure that
23 such financial institutions have policies, procedures, and
24 controls in place to prevent the unauthorized disclosure

1 of customer financial information and to deter and detect
2 activities proscribed under section 521.

3 **SEC. 526. REPORTS.**

4 (a) REPORT TO THE CONGRESS.—Before the end of
5 the 18-month period beginning on the date of the enact-
6 ment of this Act, the Comptroller General, in consultation
7 with the Federal Trade Commission, Federal banking
8 agencies, the Securities and Exchange Commission, appro-
9 priate Federal law enforcement agencies, and appropriate
10 State insurance regulators, shall submit to the Congress
11 a report on the following:

12 (1) The efficacy and adequacy of the remedies
13 provided in this subtitle in addressing attempts to
14 obtain financial information by fraudulent means or
15 by false pretenses.

16 (2) Any recommendations for additional legisla-
17 tive or regulatory action to address threats to the
18 privacy of financial information created by attempts
19 to obtain information by fraudulent means or false
20 pretenses.

21 (b) ANNUAL REPORT BY ADMINISTERING AGEN-
22 CIES.—The Federal Trade Commission and the Attorney
23 General shall submit to Congress an annual report on
24 number and disposition of all enforcement actions taken
25 pursuant to this subtitle.

1 **SEC. 527. DEFINITIONS.**

2 For purposes of this subtitle, the following definitions
3 shall apply:

4 (1) CUSTOMER.—The term “customer” means,
5 with respect to a financial institution, any person (or
6 authorized representative of a person) to whom the
7 financial institution provides a product or service,
8 including that of acting as a fiduciary.

9 (2) CUSTOMER INFORMATION OF A FINANCIAL
10 INSTITUTION.—The term “customer information of
11 a financial institution” means any information main-
12 tained by or for a financial institution which is de-
13 rived from the relationship between the financial in-
14 stitution and a customer of the financial institution
15 and is identified with the customer.

16 (3) DOCUMENT.—The term “document” means
17 any information in any form.

18 (4) FINANCIAL INSTITUTION.—

19 (A) IN GENERAL.—The term “financial in-
20 stitution” means any institution engaged in the
21 business of providing financial services to cus-
22 tomers who maintain a credit, deposit, trust, or
23 other financial account or relationship with the
24 institution.

25 (B) CERTAIN FINANCIAL INSTITUTIONS
26 SPECIFICALLY INCLUDED.—The term “financial

1 institution” includes any depository institution
2 (as defined in section 19(b)(1)(A) of the Fed-
3 eral Reserve Act), any broker or dealer, any in-
4 vestment adviser or investment company, any
5 insurance company, any loan or finance com-
6 pany, any credit card issuer or operator of a
7 credit card system, and any consumer reporting
8 agency that compiles and maintains files on
9 consumers on a nationwide basis (as defined in
10 section 603(p)).

11 (C) SECURITIES INSTITUTIONS.—For pur-
12 poses of subparagraph (B)—

13 (i) the terms “broker” and “dealer”
14 have the meanings provided in section 3 of
15 the Securities Exchange Act of 1934 (15
16 U.S.C. 78c);

17 (ii) the term “investment adviser” has
18 the meaning provided in section 202(a)(11)
19 of the Investment Advisers Act of 1940
20 (15 U.S.C. 80b–2(a)); and

21 (iii) the term “investment company”
22 has the meaning provided in section 3 of
23 the Investment Company Act of 1940 (15
24 U.S.C. 80a–3).

1 (D) FURTHER DEFINITION BY REGULA-
2 TION.—The Federal Trade Commission, after
3 consultation with Federal banking agencies and
4 the Securities and Exchange Commission, may
5 prescribe regulations clarifying or describing
6 the types of institutions which shall be treated
7 as financial institutions for purposes of this
8 subtitle.